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11
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,136
Filing Date: February 04, 2004
Appellant(s): MCCANN, RICHARD J.

MAILED

AUG 13 2007
GROUP 3700

Richard McCann
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/28/2007 appealing from the Office
action mailed 8/11/2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4451982	Collins	6-1984
5964035	Poehlmann	10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (U.S Patent No. 4,451,982) in view of Poehlmann (U.S Patent No. 5,964,035).

Collins teaches (see Figures 5 and 6) a blade movably secured to a handle, and a locking mechanism (24) that locks the blade in an extended position. The locking mechanism (24) is biased into position by spring (62) in a chamber (50). The movement of the locking mechanism (24) from the locked position to the unlocked position causes the chamber (50) to reduce in volume thereby compressing the spring (62) to create a force against the locking mechanism (24). Furthermore, Collins teaches (Col. 3, Lines 31-33) any type of biasing means will work provided it fit into chamber (50).

Collins teaches all of the elements of the current invention as stated above except the use of a gas spring.

Poehlmann teaches (Col. 8, lines 31-35) replacing a metal spring with a pneumatic or hydraulic biasing means for the purpose of biasing a locking mechanism on a folding knife.

It would have been obvious to have modified Collins to incorporate the teachings of Poehlmann to create a biased locking mechanism that did not rely on a coil spring to supply a biasing force. A coil spring and a gas spring are equivalent structures and would only require routine skill in the art to change from one to the other. Furthermore, using a pneumatic or hydraulic biasing means with a piston would be more resilient to wear and less likely to break or deform when pushed or pulled to extremes.

(10) Response to Argument

In response to Appellant's argument (Page 6) that Poehlmann does not suggest an advantage any structure or advantage to using a pneumatic biasing means, Collins teaches the structure of the biasing means except for a gas spring. Poehlmann teaches that it old and well known to replace a metal spring with a gas spring to be used for the same purpose making the metal spring of Collins and the gas spring of Poehlmann functional equivalents. Poehlmann provides all of the evidence necessary to replace the metal spring of Collins with a gas spring. Furthermore, it is known that any device designed with fewer moving parts is less prone to wear. Gas springs are known to wear less than metal springs because they cannot be deformed or misshapen when pushed or pulled to extremes within their general range of motion.

In response to Appellant's argument (Page 7) Collins does teach (Col. 3, lines 31-33) that another biasing mechanism besides a spring can be used. Further, claims 1 and 2 merely state that the variable volume chamber is substantially sealed, not fully sealed, and the chamber of Collins where the spring is located does seem to be, even without the teachings of Poehlmann, substantially sealed and have a variable volume depending on whether the spring and the locking mechanism (24) are pushed down or not. Lastly, it is inherent in the design of a pneumatic spring that the variable volume chamber would be sealed as otherwise no gas would be compressed to make a spring as all the gas in the chamber would be forced out when the piston was depressed.

In response to Appellant's argument (Page 8) that no one prior to the present inventor has substituted a gas spring into the design of a folding knife to overcome

known shortcomings of metal springs. Appellant is reminded that the prior art of record, or even prior art not of record, may have been used in the past to reject similar knives with gas springs, and it does not mean that other inventors have not tried to receive a patent on a similar device. Furthermore, Mr. McCann along with the members of the knife community who have written affidavits do not encompass the entire group of people one would think as having ordinary skill in the art when it comes to cutlery and knife making.

In response to Appellant's objective evidence for non-obviousness, the declarations provided fail to provide convincing reasons that indicate Collin's knife as modified above is not capable of performing the same function as the folding knife of the instant invention. The declarations also fail to provide convincing reasons why Collin's folding knife cannot be modified by Poehlmann's disclosed pneumatic spring. The declarations also fail to provide any facts or proofs regarding the instant invention or the prior art. There is also no connection between the claims of the instant invention and the alleged evidence, which is provided in the declarations. Each declaration does mention a gas spring, which is claimed, but the knife as claimed is different from the knife discussed in the declarations, as the claims are broader and thereby less limiting than the knife shown and tested in the declarations.

Regarding Appellant's argument that the commercial success of the invention is an indication of significant non-obvious import with respect to the art is found not to be persuasive. The declaration is insufficient because it fails to indicate the commercial success of the claimed invention. No evidence was presented that the knife of claims 1

or 2 is commercially successful as claimed. In addition, commercial success must be derived from the claimed invention. Merely, showing that there was commercial success of an article which embodied the invention is not sufficient because such success could have been the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to applicant or assignee, applicant or assignee's position as a market leader before the introduction of the patented product, or other business events extraneous to the merits of the claimed invention.

Regarding applicant's argument that there is an unsolved need: To reiterate what was stated above, the members of the knife community who provided the affidavits for the instant application do not make up the entire knife community or the entire group of people that would be considered to have ordinary skill in the art. Furthermore, failure to solve a long-felt need may be due to factors such as a lack of interest or a lack of appreciation of an invention's potential or marketability rather than a want of technical know how, as Poehlmann has clearly stated that it is known to place a pneumatic mechanism in a folding knife for the purpose of locking the blade of a folding knife in open and closed positions. Furthermore, there appears to be no evidence of any long felt need for a gas spring in a folding knife as there is no evidence of any failure of others to do so.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3724

Respectfully submitted,

Edward Landrum



May 22, 2007

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